IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 2827 of 1997

For Approval and Signature:

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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FISH FARMERS DEVELOPMENT AGENCY - Petitioner(s)
Versus
MADHUBHAI BODABHAI NAYAK - Respondent(s)

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Appearance :
MR HS MUNSHAW for Petitioner No(s).: 1.

MRS DT SHAH for Respondent No(s).: 1.

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 24/08/2005

ORAL JUDGMENT

1. This petition is directed against the award dated 19.12.1996 passed by the Labour Court, Surat, in Reference (LCS) No.141/88 whereby the Labour Court

directed the petitioner to reinstate the respondent workman in service with continuity of service and full back wages.

2. The short facts of the case are that the respondent workman was employed by the petitioner on temporary and adhoc basis. On availability of deputationist from State Government by order dated 23.12.1987 the services of the respondent were terminated. The respondent therefore raised a dispute which was referred to the Labour Court for adjudication. The Labour Court after hearing the parties, passed the award as stated hereinabove.

3. This Court, on 6.5.1997 passed the following order:

> This petition is directed against the order dated 19.12.1996 passed by the Labour Court (No.2), Surat granting relief of reinstatement with continuity of service and full back wages. The respondent workman who was in service since 1976 as a Fieldman was retrenched in the year 1987 without following the requirements of Section 25F of the Industrial Disputes Act. The learned Counsel for the petitioner has argued that the Fish Farmers Development Agency is not an industry. I find that the Labour Court has arrived at a finding that it was an industry and the requirements of section 25F have not been followed. In this view of the matter, there is no basis to interfere with the relief of reinstatement with continuity of service. I also find that on the question of back wages there is no proper application of mind.
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> Rule is made returnable by 18.6.1997. In the meanwhile the respondent workman shall be either reinstated from due date in terms of the award or with reference to the provisions of Section 17B the due amount of arrears from the due date of reinstatement in terms of the award by computing the wages which the workman would have drawn on reinstatement as a result of the award, had he not been terminated from the service, shall be paid to him and current wages shall also be paid accordingly subject to the respondent's workman furnishing the affidavit that he has remained unemployed from the date of the award

and continues to be so. The due amount of arrears as above shall be paid to the respondent workman within a period of one month from today and current wages shall also be paid to him as stated above regularly. Subject to the conditions as aforesaid, the relief with regard to back wages shall remain stayed.

Mr. Munshaw for the petitioner submitted that pursuant to the aforesaid order of this Court, the respondent workman has already been reinstated. In view of the aforesaid order and reinstatement, the only question remains to be considered is with regard to back wages.

4. Mr. Munshaw for the petitioner has submitted that the Labour Court has committed an error in granting back wages to the respondent workman. He submitted that no reasons are assigned for grant of back wages and therefore the same is required to be quashed and set aside.

5. Mrs. D.T. Shah for the respondent submitted that the Labour Court has rightly granted full back wages and if this Court is of the opinion that no proper reasons are assigned for grant of back wages the matter may be remanded to the Labour Court for this purpose. She has relied upon a decision in the case of Nagar Panchayat, Karamsad Vs. Amrish, reported in 1996(3) GLR 113 whereby this Court remanded the matter to the Labour Court to determine the question of back wages afresh.

6. As a result of hearing and perusal of the record, it is clear that the Labour Court has granted back wages without application of mind. The only reason assigned by the Labour Court is that since there is violation of provisions of Section 25F, back wages are required to be granted. On the facts of the case it is clear that the respondent was employed purely on temporary basis. It is a well settled law that

when work is not done, remuneration is not to be paid and back wages cannot be granted mechanically. The law on the subject is well settled. In the case of Ram Ashrey Singh Vs. Ram Bux Singh, reported in (2003) II LLJ 176, it is held that the workman had no automatic entitlement to back wages since it is discretionary and has to be dealt with in accordance with facts and circumstances of each case. In the case of General Manager, Haryana Roadways Vs. Rudhan Singh, reported in JT 2005(6) SC 137 (=2005 (5) SCC 591), after referring to various decisions on the said subject, the Apex Court held that order for payment of back wages should not be passed in mechanical manner, but a host of factors are to be taken into consideration before passing any such order. Paragraphs 10, 11 and 12 read as under:

> "10. In Smt. Saran Kumar Gaur and others V. State of Utter Pradesh and others, this Court observed that when work is not done remuneration is not to be paid and accordingly did not make any direction for award of past salary. In State of U.P. And Anr. V. Atal Behari Shastri and Anr, a termination order passed on 15.7.1970 terminating the services of a Licence Inspector was finally quashed by the High Court in a writ petition on 27.11.1991 and a direction was issued to pay the entire back salary from the date of termination till the date of his attaining superannuation. This Court, in absence of a clear finding that the employee was not gainfully employed during the relevant period, set aside the order of the High Court directing payment of entire back salary and substituted it by payment of a lump-sum amount of Rs.25,000/-. In Virender Kumar, General Manager, Northern Railways, New Delhi V. Avinash Chandra Chadha and others, there was a dispute regarding seniority and promotion to a higher post. This Court did not make any direction for payment of higher salary for the past period on the principle "no work no 'ay" as the respondents had actually not worked on the higher post to which they were entitled to be promoted. In Surjit Ghosh V. Chairman and Managing Director, United Commercial Bank and others, the appellant (Assistant Manager in the Bank) was dismissed from service on 28.5.1985, but his appeal was allowed by this Court on 6.2.1995 as his dismissal order was found to be suffering from an inherent defect. His claim for arrears of salary for the past period came to about Rs.20 lacs but this Court observed that a huge amount cannot be paid to anyone for doing no work and accordingly directed that a compensation amount of Rs.50000/- be paid to him in lieu of his claim for arrears of salary. In Anil Kumar Gupta V. State of Bihar, the appellants were employed as daily wage employees in Water and Land Management Institute

of the Irrigation Department of Government of Bihar and they were working on the posts of steno-typist, typists, machine operators and peons, etc. This Court allowed the appeal of the workmen and directed reinstatement but specifically held that they would not be entitled to any past salary. These authorities show that an order for payment of back wages should not be passed in a mechanical manner but host of factors are to be taken into consideration before passing any order for award of back wages.

11. In the case in hand the respondent had worked for a very short period with appellant, which was less than one year. Even during this period there were breaks in service and he had been given short term appointments on daily wage basis in different capacities. The respondent is not a technically trained person, but was working on a class IV post. According to the finding of the Industrial Tribunal-cum-Labour Court plenty of work of the same nature, which the respondent was doing, was available in the District of Rohtak. In such circumstances we are of the opinion that the respondent is not entitled to payment of any back wages.

12. The appeal is accordingly partly allowed and the award of the Industrial Tribunal-cum-Labour Court insofar as it directs reinstatement with continuity of service is upheld by the award regarding payment of 50% back wages is set aside."

7. On the facts of the case, back wages were granted mechanically without considering the facts and circumstances of the case. I am of the opinion that the learned counsel for the respondent is not fair in arguing that the matter is required to be remanded to the Labour Court only for the purpose of considering the question of back wages while confirming the order of reinstatement. I am of the opinion that in view of the settled law the Labour Court was not justified in granting full back wages. In the case of Nagar Panchayat, Karamsad (supra) on which reliance has been placed by the learned counsel for the respondent, back wages were granted only on the basis of bald statement made by workman that after termination of their services they had remained unemployed for a long period of more than five years. Such fact

situation is not present in the case on hand. Therefore, no reliance can be placed on the aforesaid decision.

8. In the premises aforesaid, the award qua back wages is quashed and set aside. The rest of the award is confirmed. Rule is made absolute accordingly with no order as to costs.

[K.S. JHAVERI, J.]

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